

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091 • AREA CODE 808 • PHONE: 768-7786 • FAX: 768-7768 • Internet: www.honolulu.gov/ethics

KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: February 19, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Letha A. S. DeCaires, EC Investigator
Darlene Nases, Po'okela Fellows Intern
Donna Leong, Corporation Counsel - COR
Geoffrey Kam, Deputy Corporation Counsel-COR
Angela K. Lo, PHR, Civil Rights Compliance Officer - OTS
Ernest Y. W. Lau, P.E., Manager and Chief Engineer – HBWS
Jill Kuramoto, Information Officer – HBWS
Marilyn C. Ushijima, Deputy Corporation Counsel – HBWS
Brian McKee, Chief Financial Officer (CEO) – HBWS
Richard E. Wilson, Attorney for Brian McKee

Absent: Charles W. Gall, Esq., Chairperson

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 477th meeting of the Ethics Commission ("Commission" or "EC") was called to order at approximately 11:30 am by Vice Chair Wong, and since there were several guests in attendance, she asked them to introduce themselves.

The Commission had before it the memorandum regarding the Agenda Items for the February 19, 2014 Meeting, Open Session, dated February 13, 2014.

In light of the Board of Water Supply ("BWS") guests in attendance, the EDLC suggested that the EC take Agenda Item V.B. first as it was regarding the BWS. **Commissioner Yuen moved to enter into Executive Session. Commissioner Lilly seconded the motion. The motion passed unanimously.**

[Corporation Counsel, Donna Leong, Deputy Corporation Counsel, Geoff Kam, and Angela Lo of OTS, exited the room.]

V. EXECUTIVE SESSION

- B. For Action: Request for Motion to Approve and Adopt Staff's Draft Advisory Opinion Regarding the Investigation of Alleged Misconduct at the Honolulu Board of Water Supply.

After discussion, the EC **unanimously approved and adopted Advisory Opinion No. 2014-1 for publication.**

[Ernest Lau, Jill Kuramoto and Marilyn Ushijima, all from HBWS, exited the room.]

Vice Chair Wong asked that the EC exit Executive Session in order to accommodate Ms. Leong's pertinent agenda items. **Commissioner Silva moved to exit Executive Session and Commissioner Burroughs seconded the motion. The motion passed unanimously.**

IV. NEW BUSINESS

- A. For Discussion Administrative News

4. **FY 2014 and 2015 Budgets**

The EDLC stated that due to a clerical error in budget allocation, the EC has an additional \$25,000 in its salary fund for use in this fiscal year. Most of this money will be used for investigative services for outstanding complex cases. The EDLC will be making a budget presentation before the City Council Budget Committee on March 10, 2014.

Vice Chair Wong asked the EDLC for details of the budget presentation. The EDLC explained that he will have time to make his presentation after Department of Corporation Counsel makes their presentation. He also stated that he will present the items approved by the Department of Budget and Fiscal Services as well as disallowed items.

5. Requests for Opinion from Corporation Counsel

EDLC stated that staff received an email from Ms. Leong this morning in which she offered to meet with him and staff regarding outstanding legal opinions: COR's authority to manage the EC's budget and COR providing ethics advice. The EDLC stated that he would like to meet with her on those issues.

C. For Action: Request for a Motion to Confirm the FY 2014 Salary for the ALC and to Approve the Requested Fiscal Year 2014 Salary for the EDLC.

The EDLC explained that there was \$5,697 in cost savings due to the delayed start date of Ms. DeCaires in August 2013. Therefore, he is asking the EC to approve use of \$4,729 to increase the ALC salary to \$78,996, which is SR 26; Step K, and the EDLC salary to \$104,061 which is comparable to a COR section head. These were the initial amounts the EDLC had proposed at the November 4, 2013 meeting. But because these additional funds were not discovered until now, the ALC and EDLC accepted lower pay than the justified amount given their years of experience and work performance. The EDLC explained that this allocation would not affect the FY 2015 budget that the EC has already set.

Vice Chair Wong asked if there were any other budget discrepancies. The EDLC responded that he was not aware of any others for FY14.

Ms. Leong addressed the EC. She clarified that in November 2013, when she had a discussion with the EC regarding salaries and the budget, the 4% increase in salaries for exempt employees that was authorized by the administration represented the commensurate increase in bargaining that occurred. Ms. Leong stated that she used the 4% increase to give merit raises to her deputies. She stated that the EDLC is asking for an additional increase to the ALC and EDLC salary for 2014, but the raises the EC gave on November 4 used up the 4% increase. She further stated that the extra \$25,000 and \$5,000 that had been discussed earlier were monies in the budget specified for investigative services. She stated in a memo that if the EC staff used this money for salary increases this year, they won't have funds to use later for investigative services.

Ms. Leong continued that she was in agreement with the EDLC that the \$25,000 will be used for a specific complex case. So she is really referring to the extra \$5,000 that was originally appropriated for investigative services that were unused because of the delayed start date. Ms. Leong asked for the start date of the new salary should the EC grant the EDLC's request. The EDLC responded that the new rate would be retroactively effective from July 1, 2013. Ms. Leong confirmed that the new salary would not affect the 2015 salaries.

Vice Chair Wong confirmed with Ms. Leong that the EDLC is the Executive Director and administrator for the EC staff and that the EC has the final say on the salaries. Ms. Leong confirmed that the EC delegated power to the EDLC to address the staff salaries.

Commissioner Chen asked the Commission to enter into Executive Session. The EDLC stated that they could enter Executive Session in order to discuss personnel issues, but the salary amounts are public information.

Commissioner Chen moved to enter into Executive Session. Commissioner Silva seconded the motion. The motion passed unanimously.

[All guests and staff with the exception of the Legal Clerk exited the room.]

At 12:40 the EC reconvened in Open Session. **Vice Chair Wong announced that during Executive Session, the EC approved the ALC's salary to \$78,996 for FY14 retroactive to July 1, 2013 and approved the EDLC's salary to \$105,028 for FY 14 and retroactive to July 1, 2013. This is a 4% increase from the FY 14 salary for the EDLC.**

Vice Chair Wong thanked Ms. Leong for attending the meeting and that the continued communication was important.

IV. NEW BUSINESS

A. For Discussion Administrative News

6. Response by Department of Transportation Services Regarding Ethics Policies for the Bus Transportation Provider.

The EDLC stated the he has received the conflict of interest and ethics policies adopted by Oahu Transit Services ("OTS"). Staff also received the draft rules for investigation of the ethics and conflicts of interest policies from the Department of Transportation Services. Staff will review the policies and draft rules. The EDLC thanked Angela Lo, Ethics Compliance Officer, OTS for attending the meeting. He stated that Ms. Lo started working with OTS in January and that we will be working together with her.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE NOVEMBER 4, 8 AND DECEMBER 4, 2013 AND JANUARY 6, 2014 MEETINGS.

Commissioner Yuen moved to approve all of the referenced minutes. Commissioner Silva seconded the motion. The motion passed unanimously.

III. OLD BUSINESS

A. The next meeting date was confirmed for March 17, 2014 at 11:30 am.

B. The EC confirmed the following meeting for April 16, 2014 at 11:30 am.

DocuCom PDF Trial
www.pdfwizard.com

amended the Revised Ordinances to include Honolulu Authority for Rapid Transportation and Board of Water Supply employees in the EC jurisdiction. One of Councilmember Kobayashi's questions then was whether her amended laws would also apply to the uncovered individuals like independent contractors. The EDLC further stated that justification is a grey issue and there are different approaches to determine whether an individual is really an employee or an independent contractor such as certain factors used by the IRS.

Vice Chair Wong asked if Chair Gall had the opportunity to review the memo yet. The ALC responded no, since it had just been distributed this morning. The ALC advised that the EC could defer the matter to next month as the issue is not time sensitive.

Vice Chair Wong confirmed that this agenda item will be deferred to next month.

EDLC suggested that the EC move to enter into Executive Session to complete review of the agenda items. **Commissioner Burroughs moved to enter into Executive Session. Commissioner Silva seconded the motion. The motion passed unanimously.**

V. EXECUTIVE SESSION

- A. For Action: Request for Motion to Approve the Minutes of the Executive Sessions of the November 4 and December 4, 213 Meeting

A motion was made and seconded to adopt the minutes. The motion passed unanimously.

- C. For Action: Hearing Regarding Complainant's Exceptions to the Hearing Officer's Report and Recommendations in Case.

The ALC stated that last week Wednesday, opposing counsel contacted staff and stated that they were unavailable for this meeting. The parties stipulated to moving the hearing to March 17, 2014 at 11:30 am pending EC approval of the Stipulation.

Deputy Corporation Counsel Geoff Kam informed the EC that he was in possession of the record of the case and that if the EC wanted to review any of the exhibits or other documents they could contact him. He also stated that he did not have a copy of the official transcript because the Hearing Officer did not order one, although he had a copy of the condensed transcript that was provided as Attachments 1 and 2 to Complainant's Exceptions.

- D. For Action: Request for Motion to Find Probable Cause of Violations RCH Sec. 11-104 (Misuse of City Position) and RCH Sec. 11-102.1(a) and ROH Sec. 3-8.7 (Acceptance of Unlawful Gifts) by City Employee.

After a brief synopsis of the case by the ALC, **Commissioner Lilly moved to designate the EDLC as Complainant and to issue the Notice of Alleged Violation to the subject of the**

Complaint. Commissioner Yuen seconded the motion. The motion passed unanimously.

Vice Chair Wong asked if there was any further discussion or outstanding agenda items. There being none, **Commissioner Burroughs moved to exit Executive Session and to adjourn the meeting. Commissioner Chen seconded the motion.**

IV. ADJOURNMENT

The meeting was adjourned at approximately 1:15 pm.

DocuCom PDF Trial
www.pdfwizard.com